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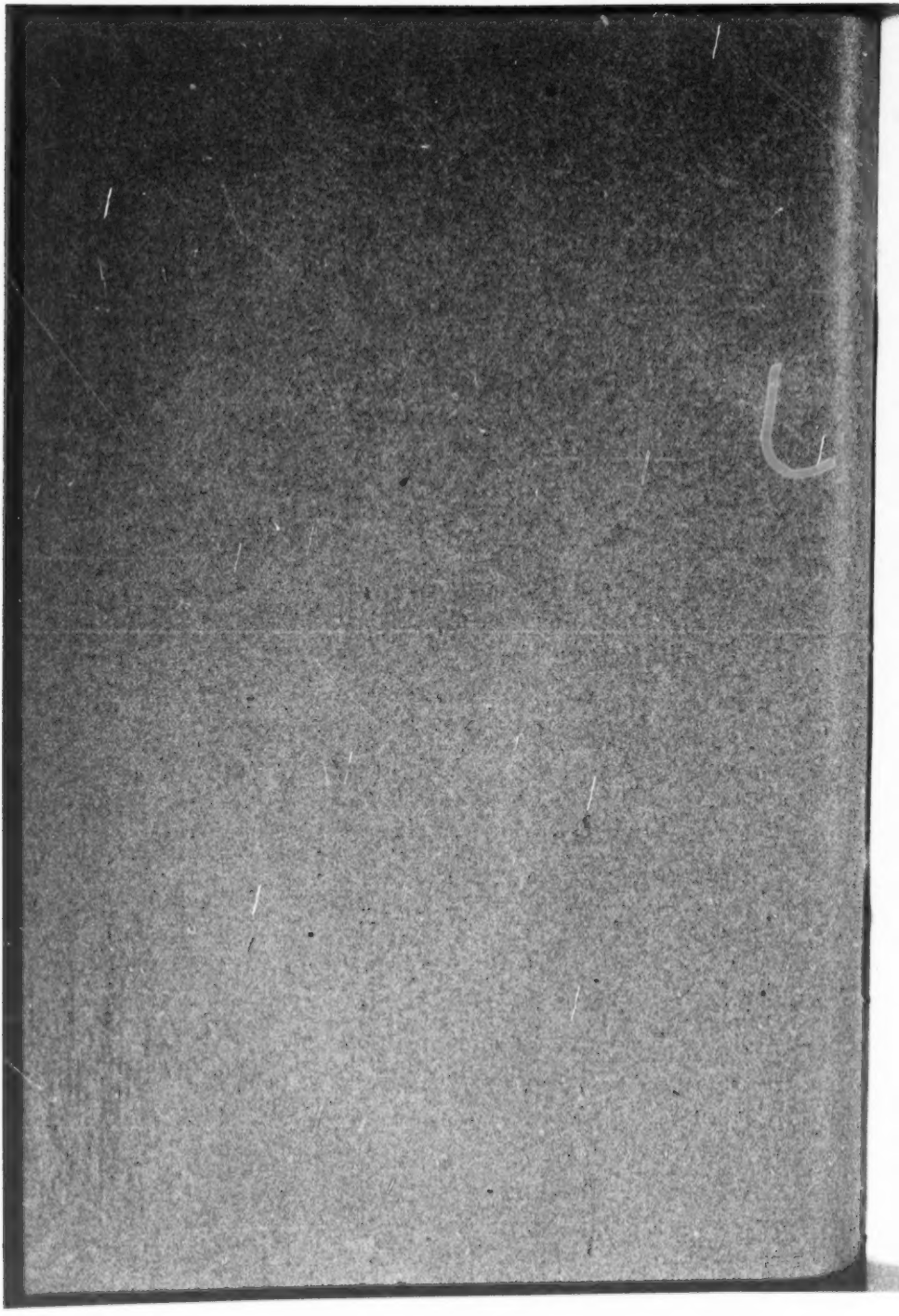
In the Supreme Court of the United States.

OCTOBER TERM, 1903.

THE UNITED STATES, PETITIONERS,
v.
SING TUCK OR KING DO AND THIRTY-one others, respondents. } No. 591

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF THEREON.



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The Solicitor-General, on behalf of the United States, respectfully prays the court to issue a writ of certiorari to review a decree of the United States circuit court of appeals for the second circuit, entered in the above-entitled case, wherein it reversed the action of the circuit court of the United States for the northern district of New York in dismissing a writ of *habeas corpus* sued out in behalf of respondents, and remanded the cause for inquiry into the status of the individual relators.

STATEMENT.

These Chinese persons came from China by way of Vancouver, over the Canadian Pacific Railroad, and made application for admission at the Canadian line. Upon examination, admission was denied, and at the time the writ of *habeas corpus*

was issued the Chinamen were being held at the detention house at Malone, N. Y., awaiting an opportunity to return them to China. (Rec., p. 16.) The petition for the writ (made upon information and belief by the Chinamen's attorney) alleges "that the relators are Chinese persons born in the United States and are citizens thereof;" "that such detention is illegal and without any authority of law whatever;" that they have been denied admission to the United States by the Chinese inspector in charge, who had no authority to pass upon the rights of "said Chinese persons to enter the United States, but has only authority to pass upon the claim upon (or) the right of aliens seeking to enter the United States." Copies of the orders made by the officer denying admission to the relators were attached to and made part of the petition. They stated in each case that the Chinaman refused to furnish the names of any witnesses or to answer any questions put to him by the Chinese inspector, excepting as to his name and the fact that he sought admission to the United States. (p. 7.)

The writ was granted by the district judge for the northern district of New York, and return duly made. (p. 16.)

The duly certified records of the examinations of the several petitioners before the immigration officers show that only five out of the thirty-two, namely, Non Chock (p. 22), Jane Lop (p. 62), Sing Hoy (p. 72), Gong Sing (p. 80), and Dew Ark

(p. 46), even stated they were born in the United States, and at that time twenty-seven set up no claim of citizenship whatever. The five who stated they were born in the United States failed to support that claim by any documentary evidence or otherwise, and no prudent inspection officer would have been justified in accepting it as true. They failed to make any showing of right to enter worthy of serious consideration.

After having been once examined all the applicants for admission were recalled and asked as to their identity and whether they had been examined on a prior day, shown photographs of themselves, and asked if the same were correct, to both of which questions they replied in the affirmative.

Twenty-seven of the relators gave their names, stated that they then made application to enter the United States, and refused to answer, substantially, every other important question propounded to them, or to give any information concerning themselves. They not only failed to show that they were born in the United States, but made no claim of such birth or of citizenship therein (pp. 12 et seq.).

Upon motion by the United States to dismiss the writ, and after careful consideration, the circuit court entered a decree adjudging the detention of the Chinamen by the inspector to be lawful and ordering that the petition be denied, that the writ of habeas corpus be dismissed, and that all of

said Chinamen be remanded to the custody of the Chinese inspector, to be dealt with according to law.

An appeal was taken to the circuit court of appeals, and that court, on January —, 1904, reversed the action of the circuit court and directed that the cause be remanded "for inquiry into the status of the individual relators."

Printed copies of the laws, treaty, and regulations relating to the exclusion of Chinese, compiled by the Department of Commerce and Labor, are filed herewith.

SPECIAL REASONS WHY CERTIORARI SHOULD ISSUE.

Since the decision of this court in *United States* v. *Wong Kim Ark* (169 U. S., 649, 1898), holding that Chinese born within the United States are citizens thereof, Chinamen arriving from China and seeking admission here have habitually set up the claim that they were born in this country, and have in scores of instances, by barefaced perjury, sought to establish such contention. There is cause to think that by reason of inability to expose the fraud very many of such persons have wrongfully secured admission.

The Government has reason to believe that there now exists an organization for the purpose of bringing Chinese laborers illegally to this country, well equipped with funds, and directed by shrewd and unscrupulous agents. The plan of procedure,

at this time the most favored and generally acted upon, is this:

Laborers from China are brought in ships landing at Vancouver, and from thence in bond by the Canadian Pacific Railroad to Malone, on the northern border of New York, where they are delivered at the detention house established there by the Bureau of Immigration. Somewhere, either before leaving China or during the journey, these laborers are drilled to say, when examined by the immigration officer, that they were born in the United States, and then to decline to answer further material questions. The officers stationed at Malone are morally sure that the claim of citizenship is utterly false, and, as no credible evidence is presented to support it, the applicant is of necessity refused admission. Immediately after such refusal, following the well-arranged programme, an attorney, "upon information and belief," swears to a petition alleging that the Chinamen are citizens of the United States, and secures the issuance of a writ of habeas corpus. Then the custom is to demand that each man be given an entirely new hearing before the court or a commissioner as to whether or not he was born in the United States, and upon that hearing a properly prepared father or uncle and other unscrupulous Chinamen are produced as witnesses to prove such birth.

Hundreds of these cases have been brought in the United States courts at San Francisco and along the Canadian border. They have been, and are, causing a vast amount of trouble for the courts and the officers of the Government, the expense entailed by reason of them is very large, and the defeat of the manifest purpose of the exclusion laws is deplorable.

I am informed by the Department of Commerce and Labor that during the six months ending December 31, 1903, 336 applications were made for entry at the port of Malone by Chinamen claiming birth in the United States, and that writs of *habeas corpus* were sued out on behalf of 326. During the same period writs were issued in behalf of 115 alleged Chinese citizens who applied for entry at San Francisco.

In opposition to the practice above outlined, and in an effort to defeat it, the Government has contended that when a Chinaman presents himself to an immigration officer at the frontier asking for admission into the United States upon the ground that he was born therein, that officer has a right to pass upon his claim of citizenship as upon any other question of fact; that an adverse decision thereon, subject to an appeal to the Secretary of Commerce and Labor, is binding upon the applicant and, except in extraordinary cases, is not subject to review by the courts upon writ of habeas corpus. This view of the law has been

sustained in an opinion rendered by United States District Judge Wheeler, of the district of Vermont, in the case of *In re Moy Quong Shing* (125 Fed. Rep., 641), and by Judge Ray in the opinion which appears in the record.

United States District Judge De Haven, northern district of California, decided (January 14, 1904) against the Government's contention, following what he regarded as the opinion of the United States circuit court of appeals for the ninth circuit in *Gee Fook Sing* v. *United States* (49 Fed. Rep., 146). His opinion is printed as an appendix hereto.

More than two hundred Chinamen who claim birth in the United States and a trial of that issue before the court are now confined at Malone. That number will probably be largely increased in the near future by additional arrivals from vessels landing at Vancouver.

The act of 1892 (section 5) expressly prohibits the courts from granting bail to Chinese persons seeking to land in the United States to whom that privilege has been denied.

I am informed that the detention house at Malone is already full to overflowing with Chinese; that considerable sickness has existed amongst them, resulting in a number of deaths, and that the condition of affairs there is exceedingly bad, with a tendency to grow worse.

The orderly administration of the Chinese exclusion laws, if the decision of the circuit court of appeals in the present cause is to be followed, it now appears will be well nigh impossible, and it is a matter of the gravest concern to know at an early day the correct interpretation of these laws and the duties and powers of the officers of the Government charged with their enforcement.

Under "An act to regulate the immigration of aliens into the United States," passed March 3, 1903, it is made the duty of immigration inspectors to exclude from the United States all aliens of certain specified classes, and it is of great importance to know whether, under this law, as well as under the Chinese-exclusion acts, the mere unsupported assertion of citizenship deprives the immigration officer of all further right to investigate the applicant's case, and whether every such case may be brought before the courts alone upon such unsupported statement. Questions arising under the two acts seem to be substantially the same and their importance is manifest. The officers of the Immigration Bureau are diligent in endeavoring to carry out the provisions of the law with the enforcement of which they are charged, but they have been greatly hindered by the rulings of the lower Federal courts, and find themselves in a maze of difficulties from which they can not hope to be finally released until this court settles the points in issue.

ARGUMENT.

The circuit court of appeals had no jurisdiction of the appeal from the circuit court and should have dismissed it.

It appears from the record that the present controversy "is one which does really and substantially involve a dispute or controversy as to a right which depends on the construction or application of the Constitution, or some law or treaty of the United States." The appellate jurisdiction of this court in respect of the same was therefore exclusive, and the appeal to the circuit court of appeals was improper. (*American Sugar Refining Company* v. *New Orleans*, 181 U. S., 277, 281; *Union and Planters' Bank* v. *Memphis*, 189 U. S., 71, 73.)

Upon the facts shown by the return, which were not controverted, the detention of the relators was manifestly proper, and the immigration officers would have been guilty of gross malfeasance if they had admitted the Chinamen.

The purpose of the Chinese exclusion acts is to *prevent* the landing of Chinese persons in the United States, except under peculiar circumstances necessary to be shown by applicants for admission. The inspection officers are charged with enforcing the laws, and it is their duty to exclude every such person who does not show himself entitled to entry under the law. If an inspection officer should permit the landing of any Chinaman who

did not in some satisfactory manner show such right, he would grossly violate his duty. Of the thirty-two men included in the present case, twenty-seven made to the immigration officer no show of right to enter; they did not even *claim* citizenship. The remaining five did say they were born in the United States, but failed to make any reasonable effort to support the claim and by their action made it incredible. The conditions were such as to make it the clear duty of the immigration officers to detain them. And as it was the duty of such officers under the law to detain, such detention was not illegal.

The purpose of a writ of habeas corpus is to inquire into the *legality* of the confinement, and unless the court find such confinement contrary to law the writ should be dismissed. *Ex parte Curtis*, 106 U. S., 375; *ex parte Crouch*, 112 U. S., 180; *Wales* v. *Whitney*, 114 U. S., 571; *Nishimura Ekiu* v. *United States*, 142 U. S., 662.

In order to discharge the Chinamen in whose behalf the writ was sued out in the present case, it would be necessary to hold that the immigration officers acted contrary to law in detaining them, and should have admitted them to entry.

As the relators had *voluntarily* applied for permission to come into the United States, the officer was compelled either to grant or refuse such permission. It would have been plainly a gross breach of his duty to have admitted them upon the facts

presented to him. It seems to follow clearly that their detention was in conformity to and not in violation of law.

When Chinese persons present themselves for admission into the United States it is the duty of immigration officers to pass upon their claims. If citizenship is alleged that, like other questions of fact, must be determined by such officers. Except, possibly, in extraordinary cases an adverse decision by the immigration officer is final, subject to an appeal to the Secretary of Commerce and Labor, and it can not be reviewed upon writ of habeas corpus.

If the *mere* statement by one possessing all the marks of a Chinaman and who has just arrived from China, that he was born in the United States ousts the immigration officer of all authority to inquire into the truth of his claim, then the purposes of the laws will be constantly defeated and the courts may expect to try thousands of cases where such pretensions are fraudulently set up.

When Congress passed the act of August 18, 1894, making a decision of the appropriate immigration officer adverse to the applicant final, it evidently intended to correct the evils growing out of writs of *habeas corpus* fraudulently sued out and to provide a speedy way of deciding questions concerning the right to admission and to prevent the very difficulties now confronting the Government officers.

Especial attention is called to the lucid opinion of Judge Ray in support of the decree entered in the circuit court, upholding the contention above announced (p. 87).

The circuit court of appeals relied in its opinion upon the authority of *Gee Fook Sing* v. *United States* (49 Fed. Rep., 146). That case was decided in January, 1892, *without argument*, and, so far as appears, the question now raised was not distinctly before the court. The case does not seem to have been regarded by counsel who appeared for respondents in the circuit court of appeals as of sufficient importance to justify its citation in their brief.

Chin Bak Kan v. *United States* (186 U. S., 193, 200) was a proceeding begun before a commissioner to deport a Chinaman already in the United States, and in reply to a contention made in behalf of the defendant, Chief Justice Fuller, delivering the opinion of the court, said:

> But it is argued that the commissioner had no jurisdiction to act because the claim of citizenship was made. The ruling in *United States* v. *Wong Kim Ark* (169 U. S., 649) was to this effect: "A child born in the United States, of parents of Chinese descent, who, at the time of his birth, are subjects of the Emperor of China, but have a permanent domicile and residence in the United States, and are there carrying on business, and are not employed in any diplomatic or official capacity under the

> Emperor of China, becomes at the time of his birth a citizen of the United States." It is impossible for us to hold that it is not competent for Congress to empower a United States commissioner to determine the various facts on which citizenship depends under that decision.

If a commissioner, under such circumstances, had jurisdiction to pass on the question of citizenship, how much clearer is the right of the immigration officer, in view of the act of 1894 making his action final, in a case where the Chinaman voluntarily applies to him for permission to enter the country. What is the immigration officer to do in such case if he has no right to decide the question presented?

In the *Japanese Immigrant case* (189 U. S., 97), Justice Harlan, delivering the opinion of the court, said:

> That Congress may exclude aliens of a particular race from the United States; prescribe the terms and conditions upon which certain classes of aliens may come to this country; establish regulations for sending out of the country such aliens as come here in violation of law; and commit the enforcement of such provisions, conditions, and regulations exclusively to executive officers, without judicial intervention, are principles firmly established by the decisions of this court. (*Nishimura Ekiu* v. *United States*, 142 U. S., 651; *Fong Yue Ting* v.

United States, 149 U. S., 698; *Lem Moon Sing* v. *United States*, 158 U. S., 538; *Wong Wing* v. *United States*, 163 U. S., 228; *Fok Yung Yo* v. *United States*, 185 U. S., 296, 305.)

Does the mere unsupported statement by a Chinaman that he was born in the United States oust the immigration officer of jurisdiction to inquire into his claim, make it unlawful for such officer to detain him, and necessitate an investigation by the courts? The Government thinks that to answer in the affirmative would emasculate the law, and that no such conclusion is permissible.

For the foregoing reasons I respectfully submit that the writ should be granted.

HENRY M. HOYT,
Solicitor-General.

J. C. MCREYNOLDS,
Assistant Attorney-General.

APPENDIX.

In the district court of the United States, northern district of California.

IN THE MATTER OF CHIN BAK BONG, on habeas corpus.

DE HAVEN, District Judge: In this proceeding under the writ of *habeas corpus*, the petitioner asks for the release of one Chin Bak Bong, alleged to be unlawfully restrained of his liberty by the general agent of the Occidental and Oriental Steamship Company. The petition alleges that Chin Bak Bong was a passenger on the steamer *Galelic*, and that it is claimed by the agent of the Occidental and Oriental Steamship Company that "said passenger is a subject of the Emperor of China, and must not and can not be allowed to land under the provisions of the act of Congress of May 6, 1882, entitled "An act to execute certain treaty stipulations relating to Chinese," and the acts amendatory thereof and supplemental thereto, and particularly the act of Congress entitled "An act to prohibit the coming into and regulate the residence within the United States, its territory and all territory under its jurisdiction, and the District of Columbia, of Chinese persons of Chinese descent, approved April 29, 1902." It is further alleged that "the said passenger does not come within the restrictions of said act or acts, but on the contrary * * * that the said passenger was born in the city and county of San Francisco,

State of California, and is a citizen of the United States." It is further alleged, in compliance with the rule of this court in relation to applications for writs of habeas corpus in this class of cases, "that the said passenger has applied for permission to enter the United States to the appropriate custom or immigration official and said application has been denied." The United States attorney has intervened in behalf of the United States and demurred to the petition upon the ground, "that the court is without jurisdiction to try and determine the same," and has also filed a motion to dismiss the petition upon the ground that the court is without jurisdiction "to hear or try any issues of fact or of law raised or involved in said petition for a writ of habeas corpus in this, to wit: That the return to the said writ of habeas corpus shows that the status of the above named Chin Bak Bong as a citizen of the United States, and his right to enter the United States on the grounds of citizenship by virtue of his birth in the United States, was fully presented, investigated, and determined by the Commissioner of Immigration."

The question of the jurisdiction of the court in a proceeding like this, to inquire whether a person of Chinese descent was in fact born in the United States and by reason of such birth entitled to return to the United States after a temporary absence therefrom, received careful consideration by Judge Morrow in the case of *In re Tom Yum* (64 Fed., 485), and the conclusion reached was that there is such jurisdiction. The cases of *In re Chin Yuen Sing* (65 Fed., 572), *In re Jew Wong Loy* (91 Fed., 240), and *Gee Fook Sing* v. *United States* (49 Fed.

146) are to the same effect. The case last cited was decided by the circuit court of appeals for this circuit, and in its opinion the court used the following language:

> We have considered all the questions of law and fact which we find involved, and our conclusions are that, inasmuch as the fourteenth article of the amendments to the Constitution of the United States declares that all persons born in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside, the laws excluding immigrants who are Chinese laborers are inapplicable to a person born in this country, and subject to the jurisdiction of its government, even though his parents were not citizens, nor entitled to become citizens, under the laws providing for the naturalization of aliens; that any person alleging himself to be a citizen of the United States, and desiring to return to his country from a foreign land, and that he is prevented from doing so without due process of law, and who on that ground applies to any United States court for a writ of *habeas corpus*, is entitled to have a hearing and a judicial determination of the facts so alleged; and that no act of Congress can be understood or construed as a bar to such hearing and judicial determination.

In my opinion the cases above cited were correctly decided, and the demurrer to the petition will be overruled, and the motion to dismiss denied.

(Indorsed:) Filed January 14, 1904. George E. Morse, clerk.

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